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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/779,477	02/12/2004	Roy Ahern	2626.002	5539

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EXAMINER

VASUDEVA, AJAY

ART UNIT	PAPER NUMBER
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3617

DATE MAILED: 04/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/779,477	Applicant(s) AHERN, ROY	
	Examiner Ajay Vasudeva	Art Unit 3617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-38 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 February 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| <p>✓ 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)</p> <p>2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)</p> <p>✓ 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date ____.</p> | <p>4) <input type="checkbox"/> Interview Summary (PTO-413)
 Paper No(s)/Mail Date. ____.</p> <p>5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)</p> <p>6) <input type="checkbox"/> Other: ____.</p> |
|---|---|

DETAILED ACTION

Specification

1. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required:

- The rectangular shape of the flotation element being about 19 inches across (claim 15)
- The side walls being between about 6-30 inches in height (claim 16).

No new matter should be entered.

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the following must be shown or the feature(s) canceled from the claim(s).

- The floatation element forming a rectangular or hexagonal shape (claims 14 and 17).

No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s).

See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Omum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 1, 5-14, 19-22, 24, and 28-38 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over the claims (as represented by figures 1-8) of U.S. Patent No. D 508,453 S (Ahern), in view of Eva, III et al. (US 5,931,113 A).

The claims of the Ahern patent are represented by figures 1-8, which show a keel element having first and second planar surfaces, a plurality of side walls, and connection means that is capable of linking to similar elements so that the uppermost surfaces of adjacent elements are substantially coplanar. The second surface includes a V-shaped keel channel extending across a center portion, the channel including two generally parallel and planar surfaces diverging outwardly to provide a guiding surface for a boat keel. The planar surfaces are spaced apart and connected by a generally planar lower surface. At least one of the side walls includes a semi-circular conduit extending along the

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Length. If the element is attached to a similar element, the semi-circular conduit would create a generally circular conduit extending through adjacent assembled elements.

Ahern, however, is silent on any specific use/applicant of the keel element, or the element being a floatation element.

Eva, III et al. shows a modular floating dock made of a plurality of cuboid structures. The structures are made buoyant to support a boat out of the water.

It would have been obvious for one skilled in the art at the time of the invention to use the keel elements of Ahern in forming a modular floating dock, as taught by Eva, III et al. Use of the keel elements would have allowed one to construct a modular dock of varying size that was suited to the specific size and weight of the boat to be supported. Use of such keel modules would have also allowed an easy handling, storage and shipment of the keel elements for use in constructing a dock at a remote destination. Further, make the keel modules hollow would have made the modules, and therefore the entire dock, buoyant such that a boat could be supported without external buoyancy attachments.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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6. Claims 1-11, 14, 18, 22, 23, 28-34, 37 and 38 are rejected under 35 U.S.C. 102(b) as being anticipated by Eva, III et al. (US 5,931,113 A).

Re claim 1, Eva, III et al. shows a plurality of floatation elements [14], each floatation element [14c] (see fig 3) having first and second planar surfaces and a plurality of side walls. Depending on which surface is up, the first surface is capable of use as a deck and the second surface is capable of receiving and guiding a watercraft.

The floatation element includes a plurality of horizontally projecting tabs to adjacently link similar floatation elements together so that the uppermost surfaces of adjacent floatation elements are substantially coplanar. The projecting tabs are vertically offset with respect to the first and second surfaces, and extend generally from intersecting corners of the side walls at different levels for overlapping cooperation with horizontally projecting tabs of adjacent floatation elements. It is noted that the floatation elements are capable of being oriented with any of the surfaces facing an upward direction, wherein the upper surface is considered to be the first surface and the lower surface is considered to be the second surface. Therefore, depending on which surface is up, the tabs would be offset closer to the first surface (claims 10 and 33) or to the second surface (claims 11 and 34). The floatation elements have octagonal shape. Because the walls (on which tabs are formed) are substantially narrower than the width of side walls, the overall shape of the element is considered to be generally rectangular.

Alternatively, regarding claims 1-4, Eva, III et al. shows another multidirectional floatation element [29a] (see figures 3 and 4) having first and second planar surfaces and a plurality of side walls. One of the side walls comprises an aperture [36] (see fig. 7A). The floatation element can be fixed in any orientation with respect to adjoining floatation elements. Although fig. 3 shows the floatation element as being vertically oriented, it is noted that such element is capable of being fixed in a horizontal orientation, wherein the first and second surfaces would

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be horizontally disposed. Therefore, if the floatation element is oriented horizontally, the aperture would be disposed in the vertically oriented side wall. A plug [40] is arranged to cooperate with the aperture for maintaining air-tightness, and can be opened to vent the air inwardly or outwardly.

Applicant may note that the claims are directed to a single floatation element, and any attachment to another floatation element has been recited merely as an intended use limitation. As such, the floatation element is considered to be capable of attachment, or attachable to, any floating dock comprising cubical floatation elements.

Re claims 22 and 23, fig. 3 shows a kit of at least six floatation elements arranged in an assembled form.

7. Claims 1, 5-11, 14, 17, 18, 22, 23, 28-34, 37 and 38 are rejected under 35 U.S.C. 102(b) as being anticipated by Ban et al. (US 5,251,560 A).

Ban et al. shows a plurality of floatation elements [2], each floatation element (see fig 2) having first and second planar surfaces [5, 6] and a plurality of side walls. Depending on which surface is up, the first surface is capable of use as a deck and the second surface is capable of receiving and guiding a watercraft. The floatation element includes a plurality of horizontally projecting tabs [9] to adjacently link similar floatation elements together so that the uppermost surfaces of adjacent floatation elements are substantially coplanar.

The projecting tabs are vertically offset with respect to the first and second surfaces, and extend generally from intersecting corners of the side walls at different levels for overlapping cooperation with horizontally projecting tabs of adjacent floatation elements (fig. 4 and fig. 9). It is noted that the floatation elements are capable of being oriented with any of the surfaces

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facing an upward direction, wherein the upper surface is considered to be the first surface and the lower surface is considered to be the second surface. Therefore, depending on which surface is up, the tabs would be offset closer to the first surface (claims 10 and 33) or to the second surface (claims 11 and 34).

The floatation elements have many shapes, such as rectangle, hexagon, octagon etc (see fig. 25-30).

As noted previously, the claims are directed to a single floatation element, and the attachment to another floatation element has been recited merely as an intended use limitation. As such, the floatation element is considered to be capable of attachment, or attachable to, any floating dock comprising cubical floatation elements.

Re claims 22 and 23, fig. 3 shows a kit of at least six floatation elements arranged in an assembled form. In claim 23, the limitation "wherein said multidirectional floatation elements are constructed and arranged to attach to each other and to said arms of said pre-existing floating drive on dry dock" (emphasis added) is an intended use limitation. In the present case, the floatation elements are capable of being attached to the arms of pre-existing dock, and therefore meet the requirement of the claim.

8. Claims 1, 5-7, 12-14, 22, 24, 28-30 and 35-38 are rejected under 35 U.S.C. 102(b) as being anticipated by Hillman et al. (US 6,006,687 A).

Hillman et al. shows a rectangular floatation element [40], each floatation element (see fig 3) having first and second planar surfaces and a plurality of side walls, and connection means to adjacently link similar floatation elements together so that the uppermost surfaces of adjacent floatation elements are substantially coplanar.

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Re claims 12, 13, 25, 35 and 36, the second surface includes a V-shaped channel extending across a center portion, the channel including two generally parallel and planar surfaces diverging outwardly to provide a guiding surface for a boat keel. The planar surfaces are spaced apart and connected by a generally planar lower surface.

The floatation element(s) is considered to be a kit that is already arranged in an assembled form. Please see explanation regarding the intended use limitations in ¶4 and ¶5 above.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hillman et al. (US 6,006,687 A).

Hillman et al. shows a rectangular floatation element, as above. However, Hillman et al. is silent on the rectangular shape being about 19 inches across, or the side walls being about 6-30 inches in height.

Applicant may note that the claimed dimensions of the floatation element are a function of the size and weight of the watercraft being supported. Therefore, it would have been obvious for one skilled in the art at the time of the invention to size the rectangular shape of the element at about 19 inches across, and the side walls at about 6-30 inches in height so that the floatation element was adequately dimensioned to safely support a watercraft of average size.

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Providing the floatation element with such dimensions would have also allowed for an easy handling, storage and shipment of the floatation element.

Allowable Subject Matter

11. Claims 19-21 and 25-27 would be allowable if:
- the claims are rewritten in independent form including all of the limitations of the base claim and any intervening claims, and
 - a timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) is filed.

Conclusion

12. The prior art made of record in the attached PTO Form 892, but not yet relied upon, is considered pertinent to applicant's disclosure.


13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ajay Vasudeva whose telephone number is (571) 272-6689. The examiner can normally be reached on Monday-Friday 12:00 -- 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, S. Joe Morano can be reached on (571) 272-6684. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Ajay Vasudeva
Examiner
Art Unit 3617


AJAY VASUDEVA
PATENT EXAMINER 4/17/06